## REMARKS/ARGUMENTS

This Request For Reconsideration is responsive to the Office Action mailed on October 7, 2003.

In the Office Action, claims 7, 8, 10, 12-16, 18, 20-24, 26, and 28-30 are rejected as obvious over Bencuya et al. (U.S. Patent No. 6,423,623) in view of Kozono (U.S. Patent No. 5,420,459). Claims 9, 11, 17, 19, 25, and 27 are rejected as obvious over Bencuya et al., Kozono, and Ishibashi (U.S. Patent No. 5,394,751). Claims 31-33 are rejected as being obvious over Bencuya et al., Kozono, and Watanabe (U.S. Patent No. 5,365,106). Each of these obviousness rejections is traversed.

Pursuant to 35 U.S.C. § 103(c), Bencuya et al. cannot be used to render the pending claims obvious, since Bencuya et al. and the present application were owned by the same assignee at the time of filing. The American Inventors Protection Act of 1999 ("AIPA") amended 35 U.S.C. § 103(c) to add that subject matter that only qualifies as prior art under 35 U.S.C. § 102(e) and that was commonly owned, or subject to an obligation of assignment to the same person, at the time the invention was made cannot be applied in a rejection under 35 U.S.C. § 103(a). Specifically, § 103(c) now states:

> Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

According to the AIPA § 4807(b), §103(c) applies to any patent application filed on or after the date of enactment, November 29, 1999. See also MPEP 706.02(l), 706.02(l)(1), and 706(l)(2), which explains the U.S.P.T.O.'s current policy towards § 103(c).

Here, the present application was filed on January 18, 2000 (i.e., after November 29, 1999) so that the changes to § 103(c) made by the AIPA apply to this application. Bencuya et al. issued on July 23, 2002, which is after the filing date for the present application (January 18, 2000). Accordingly, if it is prior art at all, it is prior art under 35 U.S.C. § 102(e).

Bencuya et al. and the present application were also commonly owned or subject to assignment to the same person, Fairchild Semiconductor Corporation, at the time that the invention of the present application was made. In this regard, the undersigned, an attorney of record states:

> **U.S. Patent Application No. 09/487,969 and U.S. Patent No. 6,423,623 were, at the time the invention of U.S. Patent Application No. 09/487,969 was made, owned by Fairchild Semiconductor Corporation or subject to an obligation of assignment to Fairchild Semiconductor Corporation.**

In sum, because Bencuya et al. is only prior art under 35 U.S.C. § 102(e) and because Bencuya et al. and the present application were commonly assigned or subject to assignment to the same person at the time of the invention, Bencuya et al. cannot be used to render the claims obvious pursuant to 35 U.S.C. § 103(a). Accordingly, Applicants respectfully request that the pending obviousness rejections of record, which are all based on Bencuya et al., be withdrawn.

## CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

Patrick R. Jewik
Reg. No. 40,456

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
PRJ:prj
60111746 v1